

**FILED**  
FEB 23 2006  
EUGENE R. WEDOFF  
BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:

Kmetz Construction Services, Inc.,

Debtor,

Case No. 05 B 55812

Chapter 11

**FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF ORDER AWARDING TO  
CHESTER H. FOSTER, JR., ATTORNEY FOR DEBTOR IN POSSESSION, FOR ALLOWANCE AND  
PAYMENT OF FINAL COMPENSATION AND REIMBURSEMENT OF EXPENSES**

TOTAL FEES REQUESTED: \$17,792.99  
TOTAL FEES REDUCED: \$ 660.74  
TOTAL FEES ALLOWED: \$17,132.25

TOTAL COSTS REQUESTED: \$2,238.51  
TOTAL COSTS REDUCED: \$ 0.00  
TOTAL COSTS ALLOWED: \$2,238.51

**TOTAL FEES AND COSTS ALLOWED: \$19,370.76**

THE COURT HAS UNDERLINED THE ATTACHED TIME AND EXPENSE ENTRIES THAT HAVE BEEN DISALLOWED IN WHOLE OR IN PART. THE NUMERICAL NOTATION THAT APPEARS ON THE RIGHT SIDE OF EACH HIGHLIGHTED ENTRY DISCLOSES THE BASIS FOR EACH DISALLOWANCE. THE NUMERICAL NOTATIONS REFER TO THE ENUMERATED PARAGRAPHS BELOW.

**(1) Lumping**

The Court may impose a ten percent penalty for "lumping." *In re Wildman*, 72 B.R. 700, 709 (Bankr. N.D.Ill. 1987) ("Applicants may not circumvent the minimum time requirement or any of the requirements of detail by "lumping" a bunch of activities into a single entry. [citation omitted]. Each type of service should be listed with the corresponding specific time allotment.").


**(2) Proper Time Increments for Billing**

The court may impose a ten percent penalty for using improper time increments for billing. "Professional persons . . . cannot, in all honesty and reasonableness, charge their clients for increments in excess of one-tenth of an hour." *re Wildman*, 72 B.R. 700, 726 (Bankr. N.D.Ill. 1987). This penalty will be imposed where time increments larger than one-tenth of an hour are being used. For example, applicants who bill time using quarter-hour increments risk the ten percent penalty.

**(3) Unreasonable Time**

The Court denies the allowance in part of compensation for the following task since the professional or paraprofessional expended an unreasonable amount of time on this task in light of the nature of the task, the experience and knowledge of the professional performing the task, and the amount of time previously expended by the professional or another on the task. *In re Pettibone*, 74 B.R. 293, 306 (Bankr.N.D.Ill. 1987) ("The Court will determine what is the reasonable amount of time an attorney should have to spend on a given project...An attorney should not be rewarded for inefficiency. Similarly, attorneys will not be fully compensated for spending an unreasonable number of hours on activities of little benefit to the estate." *In re Wildman*, 72 B.R. 700, 713 (Bankr.N.D.Ill. 1987) (same).

Dated: February 23, 2006

  
Eugene R. Wedoff  
United States Bankruptcy Court

Chester H. Foster, Jr.  
Foster, Kallen & Smith  
3825 W. 192nd Street  
Homewood, IL 60430

February 02, 2006

Kmetz Construction Co.  
236 East 161st Place  
South Holland IL 60473

Invoice # 2547

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
<u>1. General Case Administration</u>			
10/18/2005	DBF Preparation of bankruptcy schedules and e-mail to client.	1.00 80.00/hr	80.00
10/21/2005	DBF Completed first draft of bankruptcy schedules for review by client and Chester H. Foster, Jr.	2.00 80.00/hr	160.00
10/24/2005	CHF Prepare claims bar date order & write E-Mail RF regarding same.	0.30 350.00/hr	105.00
10/25/2005	CHF Office conference with E.Kmetz regarding bankruptcy generally.	1.00 350.00/hr	350.00
10/26/2005	CHF Telephone call E.Kmetz regarding collection actions.	0.20 350.00/hr	70.00
10/29/2005	CHF Review P.Wallace letter & forward same to E.Kmetz.	0.20 350.00/hr	70.00
10/30/2005	CHF Telephone call B.Scalambrino regarding union claims & subsequent telephone call with E.Kmetz regarding same.	0.50 350.00/hr	175.00
11/1/2005	DBF Review search results from CorpLink Services. E-mail KMETZ regarding findings as they relate to filed bankruptcy schedules. E-mails to Ed Kmetz.	2.00 80.00/hr	160.00
11/4/2005	CHF Telephone call E.Kmetz & voice mail to attorney for Assignment for the Benefit of Creditors Supply.	0.25 350.00/hr	87.50



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			Hrs/Rate	Amount
11/4/2005	CHF	Series of telephone calls with E.Kmetz & attorney for A.B.C. Supply regarding lien claim.	0.80 350.00/hr	280.00
①				
11/11/2005	CHF	Telephone call E.Kmetz regarding resolution of A.B.C. mechanics lien claim.	0.25 350.00/hr	87.50
②				
11/14/2005	CHF	Review & respond to E.Kmetz email regarding presenting financing plan to Bank & subsequent telephone call regarding same.	0.50 350.00/hr	175.00
①				
	CHF	Prepared for & attended Kmetz 341 meeting.	1.50 350.00/hr	525.00
	CHF	Telephone call E.Kmetz regarding new carpentry contract.	0.25 350.00/hr	87.50
②				
11/15/2005	DBF	Made amendments to Statement of Financial Affairs and Declaration regarding Bankruptcy schedules and Declaration regarding Electronic Filing. Telephone call and e-mail to Ed Kmetz.	1.00 80.00/hr	80.00
①				
11/16/2005	CHF	Telephone call E.Kmetz regarding union payments.	0.20 350.00/hr	70.00
11/17/2005	CHF	Series of telephone calls with E.Kmetz regarding payment of union dues, new contract & Debtor-in-Possession financing needs.	0.60 350.00/hr	210.00
12/1/2005	DBF	ECF Electronic filing of Notice of Intent To Present Order and Application to Employ Special Litigation Counsel.	1.00 80.00/hr	80.00
③				
12/12/2005	DBF	ECF Electronic filing of Certificate of Service and scan and e-mail Laborers Fund Proof of claim.	0.50 80.00/hr	40.00
1/9/2006	CHF	Review & respond to various E.Kmetz emails regarding case generally.	0.60 375.00/hr	225.00
1/16/2006	CHF	Series of telephone calls with regarding MO & FOB lift stay motion review & revise proposed Order.	0.80 375.00/hr	300.00
①				
1/24/2006	CHF	Write letter E.Kmetz regarding hearing on cash collateral & plan extension motion & plan confirmation problems.	0.50 375.00/hr	187.50
1/31/2006	CHF	Telephone call I.Miller regarding proposed dismissal of bankruptcy case.	0.25 375.00/hr	93.75
②				
SUBTOTAL:			[ 16.20	3,698.75]
<u>2. Retention &amp; Compensation of Professionals</u>				
10/17/2005	CHF	Drafted motion to retain attorney.	1.00 350.00/hr	350.00

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			<u>Hrs/Rate</u>	<u>Amount</u>
10/18/2005	CHF	Review W.Graham email regarding being licensed in IN only, write E-Mail to R. Friedman of U.S. Trustee's office regarding same.	0.35 350.00/hr	122.50
(2)	CHF	Write E-Mail to WG regarding motion to retain him as accountant for company.	0.20 350.00/hr	70.00
10/21/2005	CHF	Telephone call I.Miller regarding retention as special counsel.	0.20 350.00/hr	70.00
10/25/2005	CHF	In Court regarding motion to retain attorney.	0.80 350.00/hr	280.00
11/7/2005	CHF	Worked on motion to retain special counsel & series of telephone calls with E.Kmetz & I.Miller regarding same.	1.10 350.00/hr	385.00
11/9/2005	CHF	Review U.S. Trustee e-mail regarding special counsel retention.	0.25 350.00/hr	87.50
(2)				
11/11/2005	DBF	Draft application to employ special counsel. Notice of Motion. Order. Affidavit.	2.00 80.00/hr	160.00
11/30/2005	DBF	Completed Application To Employ Special Litigation Counsel S. Ira Miller. Telephone call and fax documents for review to Mr. Miller.	0.67 80.00/hr	53.33
(2)				
12/5/2005	CHF	Prepared Order regarding retention of special counsel.	0.20 350.00/hr	70.00
12/8/2005	CHF	In Court regarding retention of special counsel.	0.50 350.00/hr	175.00
2/2/2006	CHF	Worked on fee petition & telephone call E.Kmetz regarding same.	1.00 375.00/hr	375.00
(1)				

SUBTOTAL:

[ 8.27 2,198.33]

3. Cash Collateral

10/17/2005	CHF	Worked on cash collateral motion, order & notice.	1.50 350.00/hr	525.00
(1)	CHF	Series of telephone calls with ED & B.Perco of FNB regarding commencement of case & cash collateral motion.	1.00 350.00/hr	350.00
	CHF	Telephone calls with E.Primack, attorney for FNB, regarding commencement of case & cash collateral motion.	0.20 350.00/hr	70.00
10/18/2005	CHF	Review E.Kmetz email regarding cash collateral motion & respond thereto.	0.20 350.00/hr	70.00
(1)	CHF	Review FNB loan & security documents & write E-Mail to E.Primack regarding same.	0.50 350.00/hr	175.00

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		<u>Hrs/Rate</u>	<u>Amount</u>
10/18/2005	CHF Review UCC search results & made appropriate revisions to Cash Collateral Motion & Order.	1.10 350.00/hr	385.00
10/19/2005	DBF ECF Electronic filing of Motion To Employ Attorney and Motion to Use Cash Collateral.	0.60 80.00/hr	48.00
10/20/2005	CHF Review RP revisions to Cash Collateral Order, incorporated changes & Write E-Mail RP regarding same.	0.75 350.00/hr	262.50
	CHF Review RF email regarding Cash Collateral Order.	0.10 350.00/hr	35.00
10/24/2005	CHF Telephone call E.Kmetz regarding hearing on Cash Collateral Order.	0.25 350.00/hr	87.50
	CHF Telephone call RP regarding Cash Collateral Order.	0.20 350.00/hr	70.00
	CHF Write E-Mail to RF regarding Cash Collateral Order.	0.10 350.00/hr	35.00
10/25/2005	CHF In Court for presentation of cash collateral motion.	0.50 350.00/hr	175.00
	CHF Telephone call E.Primack regarding Cash Collateral Order & court hearing on same.	0.25 350.00/hr	87.50
10/30/2005	CHF Telephone call E.Kmetz & RP regarding cash collateral order & Debtor-In-Possession account.	0.20 350.00/hr	70.00
11/28/2005	CHF Series of telephone calls with E.Kmetz & prepared revised Cash Collateral budget & second Interim Cash Collateral Order & Write E-Mail to E.Kmetz regarding same.	1.20 350.00/hr	420.00
11/29/2005	CHF In Court regarding continued hearing on Cash Collateral Order (lengthy court call).	1.50 350.00/hr	525.00
12/5/2005	CHF Prepared revised 2d Interim Cash Collateral Order.	0.20 350.00/hr	70.00
12/8/2005	CHF In Court regarding continued hearing on cash collateral.	0.50 350.00/hr	175.00
1/17/2006	CHF Write E-Mail to E.Kmetz regarding Cash Collateral Order & Budget.	0.40 375.00/hr	150.00
	CHF Telephone call E.Kmetz regarding budget & revised cash collateral order regarding same.	0.50 375.00/hr	187.50
1/20/2006	CHF Telephone call E.Primack regarding cash collateral order & status of case generally.	0.35 375.00/hr	131.25

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		Hrs/Rate	Amount
1/23/2006	CHF Telephone call E.Primack regarding cash collateral motion & motion to extend date to file plan.	0.20 375.00/hr	75.00
SUBTOTAL:		[ 12.30	4,179.25]
<u>4. Plan &amp; Disclosure Statement</u>			
10/24/2005	CHF Prepared plan filing deadline extension motion & write E-Mail to RF regarding same.	0.20 350.00/hr	70.00
10/25/2005	CHF Review RF email regarding date to file plan & respond thereto.	0.10 350.00/hr	35.00
10/31/2005	CHF Telephone call E.Kmetz regarding funding difficulties.	0.20 350.00/hr	70.00
11/3/2005	CHF Review E.Kmetz email & Series of telephone calls with E.Kmetz & Norm Beles regarding Debtor-In-Possession funding.	1.00 350.00/hr	350.00
11/7/2005	CHF Series of telephone calls with E.Kmetz & RP regarding funding interim operations.	1.00 350.00/hr	350.00
11/11/2005	CHF Telephone call E.Kmetz regarding possible plan financing & subsequent telephone call with Norm Beles regarding same.	0.50 350.00/hr	175.00
11/15/2005	CHF Series of telephone calls with E.Kmetz & Norm Beles regarding possible Debtor-In-Possession financing.	0.75 350.00/hr	262.50
1/11/2006	CHF Lengthy office conference with E.Kmetz regarding plan formulation & problems regarding same.	2.60 375.00/hr	975.00
1/16/2006	DBF First draft of Motion to Extend Date to File Plan and Disclosure Statement within Notice of Motion and proposed Order.	1.33 100.00/hr	133.33
	CHF Lengthy telephone call with E.Kmetz regarding plan formulation.	0.80 375.00/hr	300.00
	CHF Worked on motion to extend date to file plan.	1.00 375.00/hr	375.00
1/17/2006	DBF ECF Electronic filing of Debtor's Motion To Extend Time To File Plan and Disclosure Statement.	0.33 100.00/hr	33.33
	CHF Telephone call E.Kmetz regarding Plan filing date extension motion.	0.20 375.00/hr	75.00
1/23/2006	CHF Telephone call IRS regarding possible plan proposal & section 1129 requirements.	0.27 375.00/hr	100.00
	CHF Prepare plan extension motion & order for presentation at hearing.	0.10 375.00/hr	37.50

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	<u>Hrs/Rate</u>	<u>Amount</u>
1/24/2006 CHF Prepared for & attended hearing on motion to extend date to file plan.	0.50 375.00/hr	187.50
<b>SUBTOTAL:</b>	[ 10.88	3,529.16]

5. Dismissal of Case

1/25/2006 CHF Telephone call E.Kmetz regarding plan problems & dismissal of bankruptcy case.	0.80 375.00/hr	300.00
CHF Telephone call E.Primack (bank's attorney) regarding plan problems & dismissal of bankruptcy case.	0.60 375.00/hr	225.00
1/26/2006 CHF Telephone call RP regarding his discussions with Bank regarding dismissal of case.	0.50 375.00/hr	187.50
1/30/2006 CHF Review email from E.Kmetz regarding dismissal of bankruptcy.	0.25 375.00/hr	93.75
② 1/31/2006 CHF Telephone call E.Kmetz & DBF regarding dismissal of case.	0.75 375.00/hr	281.25
CHF Telephone call I.Miller & E.Kmetz regarding dismissal.	0.80 375.00/hr	300.00
CHF Telephone call with E.Kmetz regarding dismissal of bankruptcy.	0.40 375.00/hr	150.00
DBF Telephone conference call with Chester H. Foster, Jr. and Ed Kmetz. First draft of Motion to Dismiss Chapter 11 Case.	4.00 100.00/hr	400.00
① 2/2/2006 CHF Worked on motion to dismiss case & Series of telephone calls with E.Kmetz regarding same.	2.00 375.00/hr	750.00
CHF Estimate time to be devoted to dismissal of case of from 2/1/06 through presentation of dismissal motion on 2/23/06.	4.00 375.00/hr	1,500.00

<b>SUBTOTAL:</b>	[ 14.10	4,187.50]
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For professional services rendered	61.75	\$17,792.99
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Additional Charges :

6. Expenses

10/31/2005 Photocopy expense.	248.50
Postage costs.	27.00